

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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HD YORSTON, on Behalf of Himself and	:	
All Others Similarly Situated,	:	
	:	Civ. No. 05 CV 10166 (PBS)
Plaintiff,	:	
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., MICHAEL	:	
D. WEBB, PEYTON J. MARSHALL, and	:	
ANDREW UPRICHARD,	:	
	:	
Defendants.	:	
	:	
-----X	:	
[Additional Captions Set Forth Below]		

REPLY MEMORANDUM IN SUPPORT OF THE MOTION OF THE TOLWIN GROUP  
FOR CONSOLIDATION OF RELATED CASES, APPOINTMENT  
AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF CO-LEAD COUNSEL

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ROBERT GREENE, Individually and on Behalf of	:	
All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civ. No. 05 CV 10194 (WGY)
	:	
vs.	:	
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	:	
EPIX PHARMACEUTICALS, INC., Formerly	:	
Known as EPIX Medical, Inc., MICHAEL D. WEBB	:	
PEYTON J. MARSHALL, and ANDREW	:	
UPRICHARD,	:	
	:	
Defendants.	:	
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	:	
JOHN C. JOHNSON JR. DEFINED BENEFIT	:	
PENSION PLAN, Individually and on Behalf of	:	
All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civ. No. 05 CV 10272 (GAO)
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., Formerly	:	
Known as EPIX Medical, Inc., MICHAEL D. WEBB	:	
PEYTON J. MARSHALL, and ANDREW	:	
UPRICHARD,	:	
	:	
Defendants.	:	
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DORAVILLE MANAGEMENT II CORP. by	:	
Donalz Ramirez, President, on Behalf of Himself and	:	
All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civ. No. 05 CV 10288 (PBS)
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., MICHAEL	:	
D. WEBB, PEYTON J. MARSHALL, and	:	
ANDREW UPRICHARD,	:	
	:	
Defendants.	:	
-----X	:	
STANLEY A. KIM, on Behalf of Himself and	:	
All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civ. No. 05 CV 10315 (PBS)
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., MICHAEL	:	
D. WEBB, PEYTON J. MARSHALL, and	:	
ANDREW UPRICHARD,	:	
	:	
Defendants.	:	
-----X	:	

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	:	
YALE TOLWIN, on Behalf of Himself and	:	
All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civ. No. 05 CV 10388 (PBS)
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., MICHAEL	:	
D. WEBB, PEYTON J. MARSHALL, and	:	
ANDREW UPRICHARD,	:	
	:	
Defendants.	:	
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	:	
SANDRA V. BIESTERFELDT, JOHN W.	:	
BIESTERFELDT, CHRISTINE M. PIPER,	:	
DOUGLAS S. PIPER, WALTER J. SWINDELL,	:	Civ. No. 05 CV 10559 (PBS)
MARY M. WEBER, and SCOTT WEBER, on	:	
Behalf of Themselves and All Persons Similarly	:	
Situated	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
EPIX PHARMACEUTICALS, INC., MICHAEL	:	
D. WEBB, PEYTON J. MARSHALL, and	:	
ANDREW UPRICHARD,	:	
	:	
Defendants.	:	
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## I. INTRODUCTION

Yale Tolwin, Walter J. Swindell, Douglas S. and Catherine M. Piper, Peter Kersloot, Rod Rogers, James E. Kohl, and Mary M. and Scott Weber (the “Tolwin Group” or “Movants”) collectively purchased 4,150 shares of EPIX Pharmaceuticals, Inc. (“EPIX”) securities between July 10, 2003 and January 14, 2005, inclusive (the “Class Period”) and suffered combined estimated losses<sup>1</sup> of \$39,088.01 as a result of their transactions in EPIX securities during the proposed Class Period. The Tolwin Group respectfully submits this Memorandum of Law in further support of their motion for: (i) consolidation of all related actions for all purposes, pursuant to Rule 42 of the Federal Rules of Civil Procedure (“F.R.C.P.”); (ii) appointment as Co-Lead Plaintiff on behalf of purchasers of EPIX securities; and (iii) approval of Movants’ selection of Co-Lead Counsel.<sup>2</sup>

## II. PROCEDURAL BACKGROUND

On or about January 27, 2005, the plaintiff in the Yorston action<sup>3</sup> filed a complaint on behalf of a class consisting of all persons who purchased EPIX securities during the Class Period

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<sup>1</sup> The losses suffered by the Movants are not the same as their legally compensable damages, measurement of which is often a complex legal question which cannot be determined at this stage of the litigation. The approximate losses can, however, be determined from the certifications required under Section 21D(a)(2)(A)(i)-(iv) of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) and based upon information concerning the current market for the Company’s securities. See Declaration of Aaron Brody, dated March 28, 2005, at Exhibit C (“Brody Decl.”).

<sup>2</sup> In the event the Court is inclined to appoint any individual investors as co-lead plaintiff, each of the Movants affirm that they are willing to serve as co-lead plaintiff individually, or as a group.

<sup>3</sup> Yorston v. EPIX Pharmaceuticals, Inc., et al., Civ. No. 05 CV 10166 (PBS).

(the “Class”). Pursuant to 15 U.S.C. § 78u-4(a) (3) (A) (i), on January 27, 2005, plaintiff in the Yorston action published notice over Business Wire, advising members of the Class of their right to move the Court to serve as lead plaintiff(s) no later than 60 days from the date of publication of the Notice, i.e., by March 28, 2005. See Brody Decl., Ex. A. Four Lead Plaintiff Motions were filed on or about March 28, 2005, and this Court is now deciding which applicant is the most adequate plaintiff.

### III. ARGUMENT

#### A. THE TOLWIN GROUP SHOULD BE APPOINTED CO-LEAD PLAINTIFF

The members of the Tolwin Group are the only individuals moving for appointment as lead plaintiff. The great majority of Class members will be individuals, and Movants believe that approving their motion to be appointed co-lead plaintiffs and approving their selection of co-lead counsel would best represent the interests of the Class.

Many courts have recognized that the combination of individuals and institutional investors can more adequately represent the broad interests of the class than institutional investors alone. See e.g. Yousefi v. Lockheed Martin Corp., 70 F. Supp.2d 1061, 1071 (C.D. Cal. 1999); In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 48 (S.D.N.Y. 1998). In Yousefi, the Court recognized the benefits of addressing the broader class interests and held that “with the appointment of one lead plaintiff who is an individual investor and one lead plaintiff that is an institutional investor, the lead plaintiffs will represent a broader range of shareholder interests than if the Court appointed an individual or an institution alone.” 70 F. Supp. 2d at 1071. Similarly, the Court in Oxford recognized that by appointing both individual and institutional investors, all class members are assured the best possible representation:

Allowing for diverse representation, including in this case . . . significant individual investors and a large institutional investor, ensures that the interests of all the class members will be adequately represented in the prosecution of the action and in the negotiation and approval of a fair settlement, and that the settlement process will not be distorted by the differing aims of differently situated parties. \_\_\_\_\_

Oxford, 182 F.R.D. at 49. See also Laborers Local 1298 Pension Fund v. Campbell Soup Co., 2000 U.S. Dist. LEXIS 5481, at \*11 (D. N.J. Apr. 24, 2000) (“The Court also considers it desirable to have both an institutional investor, like Connecticut, and individual investors, like DeValle and Green, included as lead plaintiffs since each may bring a unique perspective to the litigation.”); In re Party City Sec. Litig., 189 F.R.D. 91, 114 (D.N.J. 1999) (appointing institutional investor and individual investor as lead plaintiffs); Zaltzman v. Manugistics, Group, Inc., 1998 U.S. Dist. LEXIS 22867, at \*18-19 (D. Md. Oct. 8, 1998) (appointing Maliko Investments and a single individual investor as lead plaintiff).

Accordingly, Movants, either as a group or individually, should be appointed co-lead plaintiff precisely because they are individual investors.

#### **IV. CONCLUSION**

For all the foregoing reasons, Movants respectfully request that the Court: (i) consolidate all related actions; (ii) appoint the Tolwin Group as Co-Lead Plaintiff in the Actions; and (iii) approve Movants' selection of Co-Lead Counsel as set forth herein.

Dated: April 11, 2005

Respectfully submitted,

**GILMAN & PASTOR, LLP**

By: /s/ Douglas Brooks

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Plaintiffs and The Class**